

SEVENTY-SIXTH DAY
(Saturday, May 23, 1981)

The Senate met at 9:30 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, McKnight, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Absent-excused: Andujar, Parker, Santiesteban.

A quorum was announced present.

Senator Kent Caperton offered the invocation as follows:

Oh, God, our Father, Thou searcher of hearts, help us to draw near to Thee in sincerity and truth, diminish our hypocrisies, and forgive us during these final days when, through the pressures and the shortness of tempers, we might say and do things that might not be pleasing to Thee. We would ask Thy guidance and direction and hope that that might give us our wisdom as we make these decisions during these final days of this Session. These things that we ask in Thy name. Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVES OF ABSENCE

Senator Andujar was granted leave of absence for today on account of important business on motion of Senator Harris.

Senator Santiesteban was granted leave of absence for today on account of important business on motion of Senator Snelson.

Senator Parker was granted leave of absence for today on account of important business on motion of Senator Truan.

REPORTS OF STANDING COMMITTEES

Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 990
H.B. 991 (Amended)
H.B. 992
H.B. 2043
H.B. 1119
H.B. 1061
H.B. 931

SENATE BILLS AND RESOLUTIONS ON FIRST READING

On motion of Senator Mauzy and by unanimous consent, the following bills and resolutions were introduced, read first time and referred to the Committee indicated:

S.B. 1290 by Ogg Intergovernmental Relations
Relating to granting the Commissioners Court of Harris County the authority to prohibit sewage and waste discharges into drainage ditches within the right-of-way of County Roads.

S.B. 1291 by Santiesteban Natural Resources
Relating to the lease of certain state-owned land for developing minerals other than oil and gas.

S.B. 1292 by Snelson Education
Relating to pilot programs for the purpose of studying alternative methods of instruction in language programs for students of limited English-speaking ability.

S.C.R. 126 by Santiesteban Administration
Granting J. D. Abrams permission to sue the State.

S.C.R. 127 by Ogg Administration
Granting the Equitable Life Assurance Society of the United States permission to sue the State.

S.C.R. 128 by Ogg Administration
Granting Mutual Life Insurance Company of New York permission to sue the State.

S.R. 719 by Santiesteban Natural Resources
Directing the Senate Natural Resources Committee to conduct an interim study on water supply and development, energy conservation, nuclear and industrial waste and maritime industry.

S.R. 720 by Mauzy Jurisprudence
Directing the Senate Jurisprudence Committee to initiate a study of the application and implementation of the Texas Open Records Act.

S.R. 721 by Mauzy Jurisprudence
Directing the Senate Jurisprudence Committee to initiate a study of railroad crossings in Texas.

S.R. 722 by Mengden Natural Resources
Directing the Senate Natural Resources Committee to study municipal annexation of submerged land in Gulf Coast region.

S.R. 723 by Mauzy Jurisprudence
Directing Senate Jurisprudence Committee to initiate a study of the Texas Workers' Compensation laws.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 338, To Committee on Education.
H.B. 362, To Committee on Jurisprudence.
H.B. 957, To Committee on Finance.
H.B. 1013, To Committee on Intergovernmental Relations.
H.B. 1015, To Committee on Education.
H.B. 1150, To Committee on Intergovernmental Relations.
H.B. 1151, To Committee on Intergovernmental Relations.
H.B. 1249, To Committee on Jurisprudence.
H.B. 1321, To Committee on State Affairs.
H.B. 1327, To Committee on Jurisprudence.
H.B. 1570, To Committee on Economic Development.
H.B. 1785, To Committee on Intergovernmental Relations.
H.B. 1828, To Committee on Intergovernmental Relations.
H.B. 1905, To Committee on State Affairs.
H.B. 1984, To Committee on Jurisprudence.
H.B. 2081, To Committee on State Affairs.
H.B. 2154, To Committee on Economic Development.
H.B. 2178, To Committee on Intergovernmental Relations.
H.B. 2209, To Committee on Natural Resources.

SENATE RESOLUTION 728

Senator McKnight offered the following resolution:

WHEREAS, David Sarpalius will celebrate his eighth birthday on Sunday, May 24; and

WHEREAS, David was born in Amarillo and is the son of Bill and Donna Sarpalius; and

WHEREAS, David shares his birthday with his paternal grandmother; and

WHEREAS, David served as campaign manager for his father in his father's recent senate race; and

WHEREAS, David and his mother, Donna, moved to Austin with Bill Sarpalius for the 67th Legislative Session and during his stay in Austin, David has become an accomplished swimmer and has become the proud owner of a quarterhorse; and

WHEREAS, David will serve the Senate in the invaluable capacity of honorary page in the closing days of the session; now, therefore, be it

RESOLVED, That the Senate of the 67th Legislature of the State of Texas wish David a happy birthday; and, be it further

RESOLVED, That an official copy of this Resolution be prepared for David Sarpalius as an expression of best wishes from the Senate of the State of Texas.

The resolution was read.

On motion of Senator Harris and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator McKnight and by unanimous consent, the resolution was considered immediately and was adopted.

CO-AUTHOR OF SENATE BILL 266

On motion of Senator Traeger and by unanimous consent, Senator Uribe will be shown as Co-author of S.B. 266.

CO-AUTHOR OF SENATE BILL 775

On motion of Senator Ogg and by unanimous consent, Senator Farabee will be shown as Co-author of S.B. 775.

COMMITTEE SUBSTITUTE SENATE BILL 983 ON SECOND READING

The President laid before the Senate on its second reading and passage to engrossment: (On Friday, May 22, 1981, the bill was read second time, amended, and left as unfinished business with an amendment by Senator Truan pending.)

C.S.S.B. 983, Relating to the prohibition of motor vehicles on coastal beaches.

Question - Shall the pending amendment be adopted?

The pending amendment failed of adoption by the following vote: Yeas 4, Nays 19.

Yeas: Doggett, Kothmann, Traeger, Truan.

Nays: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, McKnight, Meier, Mengden, Ogg, Richards, Sarpalius, Travis, Uribe, Williams, Wilson.

Absent: Leedom, Mauzy, Short, Snelson, Vale.

Absent-excused: Andujar, Parker, Santiesteban.

The bill as amended was passed to engrossment by the following vote: Yeas 22, Nays 4.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, McKnight, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Uribe, Williams, Wilson.

Nays: Doggett, Kothmann, Truan, Vale.

Absent: Leedom, Mauzy.

Absent-excused: Andujar, Parker, Santiesteban.

COMMITTEE SUBSTITUTE SENATE BILL 983 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 983** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 21, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, McKnight, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Travis, Uribe, Williams, Wilson.

Nays: Doggett, Kothmann, Traeger, Truan, Vale.

Absent: Leedom, Mauzy.

Absent-excused: Andujar, Parker, Santiesteban.

The bill was read third time.

Senator Harris moved the Previous Question on the final passage of the bill.

The motion was seconded by Senators Richards, Sarpalius, Howard, Mengden and Blake.

The Previous Question was ordered by the following vote: Yeas 14, Nays 12.

Yeas: Blake, Brooks, Brown, Glasgow, Harris, Howard, Jones, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Travis.

Nays: Caperton, Doggett, Farabee, Kothmann, McKnight, Snelson, Traeger, Truan, Uribe, Vale, Williams, Wilson.

Absent: Leedom, Mauzy.

Absent-excused: Andujar, Parker, Santiesteban.

The bill was finally passed by the following vote: Yeas 21, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, McKnight, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Travis, Uribe, Williams, Wilson.

Nays: Doggett, Kothmann, Traeger, Truan, Vale.

Absent: Leedom, Mauzy.

Absent-excused: Andujar, Parker, Santiesteban.

BILLS AND RESOLUTION SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolution:

S.B. 755

S.B. 555

S.B. 425

H.C.R. 200

H.B. 201

H.B. 258

H.B. 345

H.B. 357

H.B. 416

H.B. 509
H.B. 517
H.B. 838
H.B. 878
H.B. 940
H.B. 979
H.B. 1022
H.B. 1030
H.B. 1054
H.B. 1170
H.B. 1288
H.B. 1316
H.B. 1345
H.B. 1346
H.B. 1397
H.B. 1539
H.B. 1617
H.B. 1691
H.B. 1693
H.B. 1890
H.B. 1934
H.B. 1935
H.B. 2038
H.B. 2078
H.B. 2125
H.B. 2149
H.B. 2207
H.B. 2229
H.B. 2199

MOTION TO REREFER HOUSE BILL 2089

Senator Harris moved that H.B. 2089 be withdrawn from the Committee on Economic Development and rereferred to the Committee on Natural Resources.

On motion of Senator Harris and by unanimous consent, the motion was withdrawn.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 3, Granting Billie Herrin permission to sue the state. (With amendment)

S.C.R. 27, Encouraging Merit Council to continue affirmation actions for disabled persons.

S.C.R. 35. Creating a special interim committee to study state services for persons with diabetes.

S.C.R. 53. Requesting Congress not to adopt the split-basing mode for the M-X missile system.

S.C.R. 102. Commending the work of the programs for victims of domestic violence as well as the efforts of the Texas Council on Family Violence.

S.C.R. 107. Congratulating the City of Odessa on its Centennial Celebration.

S.C.R. 112. Congratulating Mr. Jerome Chapman.

S.C.R. 117. Recognizing the Centennial Year of the Organized Practice of Law in the State of Texas.

H.C.R. 158. Congratulating the Texas Criminal Justice Center.

H.C.R. 165. Requesting Health Facilities Commission to look favorably on application for Midway Park Hospital in Lancaster, Texas.

H.C.R. 182. Granting Buckner Construction Company permission to sue the state.

H.C.R. 184. Commending Dr. H. E. Jenkins.

H.C.R. 192. Expressing support for the proposed new air service by Pan Am, American and Braniff.

H.C.R. 199. Creating a special committee on regional intergovernmental cooperation.

H.C.R. 201. Granting J. D. Abrams, Inc., permission to sue the state.

The House has adopted the Conference Committee Report on **H.B. 1421** by a non-record vote.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

POINT OF ORDER ON CONSIDERATION OF HOUSE BILL 360

Senator McKnight raised a Point of Order on consideration of **H.B. 360**, stating the bill had not been reported from Committee nor filed with the Senate and could not be set as Special Order.

The President overruled the Point of Order.

HOUSE BILL 360 ON SECOND READING

The President laid before the Senate on its second reading and passage to third reading: (On Thursday, May 21, 1981, the bill was set as Special Order for 10:00 o'clock a.m., Saturday, May 23, 1981.)

H.B. 360, Relating to the interception and use of wire or oral communications.

The bill was read second time.

Senator Doggett raised the Point of Order that the ruling by the President set or altered precedent and must be printed as an annotation to the Rules.

The President overruled the Point of Order; that he would take the Point of Order under advisement.

Senator Doggett raised the Point of Order that the bill was printed before being received by the Senate, in violation of the Printing Rule.

The President overruled the Point of Order, stating the bill had been printed and placed on the Members' desk 24 hours before consideration after being reported from committee.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360** by adding the following to Sec. 2 on line 12, page 3 after the period.

The contents of an intercepted communication and evidence derived from an intercepted communication may be received in a civil trial, hearing, or other proceeding only if the civil trial, hearing or other proceeding arises out of a violation of the penal code, code of criminal procedure, controlled substances act or dangerous drug act.

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360**, SECTION 1, Article 18.20, Section 5 to read as follows:

Sec. 5. CONTROL OF INTERCEPTING DEVICES. (a) Only the Department of Public Safety is authorized by this article to own, possess, install, operate, or monitor an electronic, mechanical, or other device. The Department of Public Safety may be assisted by an investigative or law enforcement officer in the operation and monitoring of an interception of wire or oral communications, provided that a commissioned officer of the Department of Public Safety is present at all times.

(b) The director shall designate in writing the commissioned officers of the Department of Public Safety who are responsible for the possession, installation, operation, and monitoring of electronic, mechanical, or other devices for the department.

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360**, by adding a new SECTION 5, and renumbering the current SECTION 5 as SECTION 6.

SECTION 5. This Act shall not be in force after September 1, 1985.

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360**, Section 2, Article 16.02, Subsection (e) to read as follows:

(e) It is an affirmative defense to the application of Subsection (d) of this section that the manufacture, assembly, possession, sale, sending, or carrying of an electronic, mechanical, or other device that is designed primarily for the purpose of non-consensual interception of wire or oral communication is by:

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360**, SECTION 1, Article 18.20, Section 13, Subsection (c) to read as follows:

(c) On an ex parte showing of good cause to the judge, the serving of the inventory required by this section may be postponed, but in no event may any evidence derived from an order under this Article be disclosed in any trial, until after such inventory has been served.

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360**, SECTION 2, Section 16.02 by amending Subsection (b)(3), adding Subsection (b)(4), and Subsection (c) to read as follows:

(3) knowingly or intentionally uses or endeavors to use the contents of a wire or oral communication if he knows or is reckless about whether the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire or oral communications without court order or authorization.

(c) It is an affirmative defense to the application of Subsection (b) of this section that:

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360** on page 4, line 3 by adding a new sentence between the words "district" and "to" to read as follows:

"Exigent circumstances does not include a denial of a previous application on the same facts and circumstances."

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360** on page 15, line 7 by substituting the word "shall" for the words "may in his discretion."

The committee amendment was read.

Senator Howard offered the following committee amendment to the bill:

Amend **H.B. 360**, on Page 22, line 16 by substituting the word "second" for the word "third".

The committee amendment was read.

Senator Howard moved that the committee amendments be tabled.

The motion prevailed by the following vote: Yeas 19, Nays 9.

Yeas: Blake, Brooks, Brown, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Wilson.

Nays: Caperton, Doggett, Mauzy, McKnight, Ogg, Truan, Uribe, Vale, Williams.

Absent-excused: Andujar, Parker, Santiesteban.

Senator Howard offered the following amendment to the bill:

Amend House Bill 360 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 18, Code of Criminal Procedure, 1965, as amended, is amended by adding Article 18.20 to read as follows:

Art. 18.20. INTERCEPTION AND USE OF WIRE OR ORAL COMMUNICATIONS

Sec. 1. DEFINITIONS. In this article:

(1) "Wire communication" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications.

(2) "Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation.

(3) "Intercept" means the aural acquisition of the contents of a wire or oral communication through the use of an electronic, mechanical, or other device.

(4) "Electronic, mechanical, or other device" means a device or apparatus primarily designed or used for the nonconsensual interception of wire or oral communications.

(5) "Investigative or law enforcement officer" means an officer of this state or of a political subdivision of this state who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in Section 4 of this article or an attorney authorized by law to prosecute or participate in the prosecution of the enumerated offenses.

(6) "Contents," when used with respect to a wire or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication.

(7) "Judge of competent jurisdiction" means a judge from the panel of nine active district judges with criminal jurisdiction appointed by the presiding judge of the court of criminal appeals as provided by Section 3 of this article.

(8) "Prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.

(9) "Director" means the director of the Department of Public Safety or, if the director is absent or unable to serve, the assistant director of the Department of Public Safety.

(10) "Communication common carrier" has the meaning given the term "common carrier" by Section 153(h), Title 47, of the United States Code.

(11) "Aggrieved person" means a person who was a party to an intercepted wire or oral communication or a person against whom the interception was directed.

(12) "Covert entry" means any entry into or onto premises which if made without a court order allowing such an entry under this Act, would be a violation of the Penal Code.

Sec. 2. PROHIBITION OF USE AS EVIDENCE OF INTERCEPTED COMMUNICATIONS. The contents of an intercepted communication and evidence derived from an intercepted communication may not be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States or of this state or a political subdivision of this state if the disclosure of that information would be in violation of this article. The contents of an intercepted communication and evidence derived from an intercepted communication may be received in a civil trial, hearing, or other proceeding only if the civil trial, hearing or other proceeding arises out of a violation of the Penal Code, Code of Criminal Procedure, Controlled Substances Act or Dangerous Drug Act.

Sec. 3. JUDGES AUTHORIZED TO CONSIDER INTERCEPTION APPLICATIONS. (a) The presiding judge of the court of criminal appeals, by order filed with the clerk of that court, shall appoint one district judge from each of the administrative judicial districts of this state to serve at his pleasure as the judge of competent jurisdiction within that administrative judicial district. The presiding judge shall fill vacancies, as they occur, in the same manner.

(b) Except as provided by Subsection (c) of this section, only the judge of competent jurisdiction for the administrative judicial district in which the proposed interception will be made may act on an application for authorization to intercept wire or oral communications.

(c) If the judge of competent jurisdiction for an administrative judicial district is absent or unable to serve or if exigent circumstances exist, the application may be made to the judge of competent jurisdiction in an adjacent administrative judicial district. Exigent circumstances does not include a denial of a previous application on the same facts and circumstances. To be valid, the application must fully explain the circumstances justifying application under this subsection.

Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED. A judge may issue an order authorizing interception of wire or oral communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of a felony (other than felony possession of marihuana) under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) or of a felony under the Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes).

Sec. 5. CONTROL OF INTERCEPTING DEVICES. (a) Only the Department of Public Safety is authorized by this article to own, possess, install, operate, or monitor an electronic, mechanical, or other device. The Department of Public Safety may be assisted by an investigative or law enforcement officer in the operation and monitoring of an interception of wire or oral communications, provided that a commissioned officer of the Department of Public Safety is present at all times.

(b) The director shall designate in writing the commissioned officers of the Department of Public Safety who are responsible for the possession, installation, operation, and monitoring of electronic, mechanical, or other devices for the department.

Sec. 6. REQUEST FOR APPLICATION FOR INTERCEPTION. (a) The director, may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire or oral communications.

(b) The head of a local law enforcement agency or, if the head of the local law enforcement agency is absent or unable to serve, the acting head of the local law enforcement agency may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire or oral communications. Prior to the requesting of an application under this subsection, the head of a local law enforcement agency must submit the request and supporting affidavits to the director, who shall make a finding in writing whether the request and supporting affidavits establish that other investigative procedures have been tried and failed or they reasonably appear unlikely to succeed or to be too dangerous if tried, is feasible, is justifiable, and whether the Department of Public Safety has the necessary resources available. The prosecutor may file the application only after a written positive finding on all the above requirements by the director.

Sec. 7. AUTHORIZATION FOR DISCLOSURE AND USE OF INTERCEPTED COMMUNICATIONS. (a) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire or oral communication or evidence derived from the communication may disclose the contents or evidence to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire or oral communication or evidence derived from the communication may use the contents or evidence to the extent the use is appropriate to the proper performance of his official duties.

(c) A person who received, by any means authorized by this article, information concerning a wire or oral communication or evidence derived from a communication intercepted in accordance with the provisions of this article may disclose the contents of that communication or the derivative evidence while giving testimony under oath in any proceeding held under the authority of the United States, of this state, or of a political subdivision of this state.

(d) An otherwise privileged wire or oral communication intercepted in accordance with or in violation of the provisions of this article does not lose its privileged character.

(e) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in a manner authorized by this article, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization, the contents of and evidence derived

from the communication may be disclosed or used as provided by Subsections (a) and (b) of this section. Such contents and any evidence derived therefrom may be used under Subsection (c) of this section when authorized by a judge of competent jurisdiction where the judge finds, on subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this article. The application shall be made as soon as practicable.

Sec. 8. APPLICATION FOR INTERCEPTION AUTHORIZATION.

(a) To be valid, an application for an order authorizing the interception of a wire or oral communication must be made in writing under oath to a judge of competent jurisdiction and must state the applicant's authority to make the application. An applicant must include the following information in the application:

(1) the identity of the prosecutor making the application and of the officer requesting the application;

(2) a full and complete statement of the facts and circumstances relied on by the applicant to justify his belief that an order should be issued, including:

(A) details about the particular offense that has been, is being, or is about to be committed;

(B) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(C) a particular description of the type of communication sought to be intercepted; and

(D) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed or to be too dangerous if tried;

(4) a statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication is first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur after the described type of communication is obtained;

(5) a statement whether or not a covert entry will be necessary to properly and safely install the wiretapping or electronic surveillance or eavesdropping equipment; if a covert entry is requested, a statement as to why such an entry is necessary and proper under the facts of the particular investigation shall be required;

(6) a full and complete statement of the facts concerning all applications known to the prosecutor making the application that have been previously made to a judge for authorization to intercept wire or oral communications involving any of the persons, facilities, or places specified in the application and of the action taken by the judge on each application; and

(7) if the application is for the extension of an order, a statement setting forth the results already obtained from the interception or a reasonable explanation of the failure to obtain results.

(b) The judge may, in an ex parte hearing in chambers, require additional testimony or documentary evidence in support of the application, and such testimony or documentary evidence shall be preserved as part of the application.

Sec. 9. ACTION ON APPLICATION FOR INTERCEPTION ORDER. (a) On receipt of an application, the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire or oral communications if the judge determines from the evidence submitted by the applicant that:

(1) there is probable cause to believe that a person is committing, has committed, or is about to commit a particular offense enumerated in Section 4 of this article;

(2) there is probable cause to believe that particular communications concerning that offense will be obtained through the interception;

(3) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed or to be too dangerous if tried; and

(4) there is probable cause to believe that the facilities from which or the place where the wire or oral communications are to be intercepted are being used or are about to be used in connection with the commission of an offense or are leased to, listed in the name of, or commonly used by the person;

(5) a covert entry is or is not necessary to properly and safely install the wiretapping or electronic surveillance or eavesdropping equipment.

(b) An order authorizing the interception of a wire or oral communication must specify:

(1) the identity of the person, if known, whose communications are to be intercepted;

(2) the nature and location of the communications facilities as to which or the place where authority to intercept is granted;

(3) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(4) the identity of the officer making the request and the identity of the prosecutor;

(5) the time during which the interception is authorized, including a statement of whether or not the interception will automatically terminate when the described communication is first obtained; and

(6) whether or not a covert entry or surreptitious entry is necessary to properly and safely install wiretapping, electronic surveillance or eavesdropping equipment.

(c) In an order authorizing the interception of a wire or oral communication, the judge issuing it, on request of the applicant, shall direct that a communication common carrier, landlord, custodian, or other person furnish the applicant all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the carrier, landlord, custodian, or other person is providing the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing facilities or technical assistance is entitled to compensation by the applicant for the facilities or assistance at the prevailing rates.

(d) An order entered pursuant to this section may not authorize the interception of a wire or oral communication for longer than is necessary to achieve the objective of the authorization and in no event may it authorize interception for more than 30 days. The issuing judge may grant extensions of an order, but only on application for an extension made in accordance with Section 8 of this article and the court making the findings required by Subsection (a) of this section. The period of extension may not be longer than the authorizing judge deems necessary to achieve the purposes for which it is granted and in no event may the extension be for more than 30 days. To be valid, each order and extension of an order must provide that the authorization to intercept be executed as soon as practicable, be conducted in a way that minimizes the interception of communications not otherwise subject to interception under this article, and terminate on obtaining the authorized objective or within 30 days, whichever occurs sooner.

(e) Whenever an order authorizing interception is entered pursuant to this article, the order may require reports to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at any interval the judge requires.

(f) A judge who issues an order authorizing the interception of a wire or oral communication may not hear a criminal prosecution in which evidence derived from the interception may be used or in which the order may be an issue.

Sec. 10. PROCEDURE FOR PRESERVING INTERCEPTED COMMUNICATIONS. (a) The contents of a wire or oral communication intercepted by means authorized by this article shall be recorded on tape, wire, or other comparable device. The recording of the contents of a wire or oral communication under this subsection shall be done in a way that protects the recording from editing or other alterations.

(b) Immediately on the expiration of the period of the order and all extensions, if any, the recording shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. The recordings may not be destroyed until at least 10 years after the date of expiration of the order and the last extension, if any. A recording may be destroyed only by order of the judge of competent jurisdiction for the administrative judicial district in which the interception was authorized.

(c) Duplicate recordings may be made for use or disclosure pursuant to Subsections (a) and (b), Section 7, of this article for investigations.

(d) The presence of the seal required by Subsection (b) of this section of a satisfactory explanation of its absence is a prerequisite for the use or disclosure of the contents of a wire or oral communication or evidence derived from the communication under Subsection (c), Section 7, of this article.

Sec. 11. SEALING OF ORDERS AND APPLICATIONS. The judge shall seal each application made and order granted under this article. Custody of the applications and orders shall be wherever the judge directs. An application or order may be disclosed only on a showing of good cause before a judge of competent jurisdiction and may not be destroyed until at least 10 years after the date it is sealed. An application or order may be destroyed only by order of the judge of competent jurisdiction for the administrative judicial district in which it was made or granted.

Sec. 12. CONTEMPT. A violation of Section 10 or 11 of this article may be punished as contempt of court.

Sec. 13. NOTICE AND DISCLOSURE OF INTERCEPTION TO A PARTY. (a) Within a reasonable time but not later than 90 days after the date an application for an order is denied or after the date an order or the last extension, if any, expires, the judge who granted or denied the application shall cause to be served on the persons named in the order or the application and any other parties to intercepted communications, if any, an inventory, which must include notice:

- (1) of the entry of the order or the application;
- (2) of the date of the entry and the period of authorized interception or the date of denial of the application; and
- (3) that during the authorized period wire or oral communications were or were not intercepted.

(b) The judge, on motion, may in his discretion make available to a person or his counsel for inspection any portion of an intercepted communication, application, or order that the judge determines, in the interest of justice, to disclose to that person.

(c) On an ex parte showing of good cause to the judge, the serving of the inventory required by this section may be postponed, but in no event may any evidence derived from an order under this article be disclosed in any trial, until after such inventory has been served.

Sec. 14. PRECONDITIONS TO USE AS EVIDENCE. (a) The contents of an intercepted wire or oral communication or evidence derived from the communication may not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not later than the 10th day before the date of the trial, hearing, or other proceeding, has been furnished with a copy of the court order and application under which the interception was authorized or approved. This 10-day period may be waived by the judge if he finds that it is not possible to furnish the party with the information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(b) An aggrieved person charged with an offense in a trial, hearing, or proceeding in or before a court, department, officer, agency, regulatory body, or other authority of the United States or of this state or a political subdivision of this state may move to suppress the contents of an intercepted wire or oral communication or evidence derived from the communication on the ground that:

- (1) the communication was unlawfully intercepted;
- (2) the order authorizing the interception is insufficient on its face; or
- (3) the interception was not made in conformity with the order.

(c) A person identified by a party to an intercepted wire or oral communication during the course of that communication may move to suppress the contents of the communication on the grounds provided in Subsection (b) of this section or on the ground that the harm to the person resulting from his identification in court exceeds the value to the prosecution of the disclosure of the contents.

(d) The motion to suppress must be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. The hearing on the motion shall be held in camera upon the written request of the aggrieved person. If the motion is granted, the contents of the intercepted wire or oral communication and evidence derived from the communication shall be treated as having been obtained in violation of this article. The judge, on the filing of the motion by the aggrieved person, shall make available to the aggrieved person or his counsel for inspection any portion of the intercepted communication or evidence derived from the communication that the judge determines, in the interest of justice, to make available.

(e) Any judge of this state, upon hearing a pretrial motion regarding conversations intercepted by wire pursuant to this article, or who otherwise becomes informed that there exists on such intercepted wire or oral communication identification of a specific individual who is not a party or suspect to the subject of interception:

(1) shall give notice and an opportunity to be heard on the matter of suppression of references to that person if identification is sufficient so as to give notice; or

(2) shall suppress references to that person if identification is sufficient to potentially cause embarrassment or harm which outweighs the probative value, if any, of the mention of such person, but insufficient to require the notice provided for in Subdivision (1), above.

Sec. 15. REPORTS CONCERNING INTERCEPTED WIRE OR ORAL COMMUNICATIONS. (a) Within 30 days after the date an order or the last extension, if any, expires or after the denial of an order, the issuing or denying judge shall report to the Administrative Office of the United States Courts:

- (1) the fact that an order or extension was applied for;
- (2) the kind of order or extension applied for;
- (3) the fact that the order or extension was granted as applied for, was modified, or was denied;
- (4) the period of interceptions authorized by the order and the number and duration of any extensions of the order;
- (5) the offense specified in the order or application or extension;
- (6) the identity of the officer making the request and the prosecutor; and
- (7) the nature of the facilities from which or the place where communications were to be intercepted.

(b) In January of each year each prosecutor shall report to the Administrative Office of the United States Courts the following information for the preceding calendar year:

- (1) the information required by Subsection (a) of this section with respect to each application for an order or extension made;
- (2) a general description of the interceptions made under each order or extension, including the approximate nature and frequency of incriminating communications intercepted, the approximate nature and frequency of other communications intercepted, the approximate number of persons whose communications were intercepted, and the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;
- (3) the number of arrests resulting from interceptions made under each order or extension and the offenses for which arrests were made;
- (4) the number of trials resulting from interceptions;
- (5) the number of motions to suppress made with respect to interceptions and the number granted or denied;
- (6) the number of convictions resulting from interceptions, the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions; and
- (7) the information required by Subdivisions (2) through (6) of this subsection with respect to orders or extensions obtained.

(c) Any judge or prosecutor required to file a report with the Administrative Office of the United States Courts shall forward a copy of such report to the director of the Department of Public Safety. On or before March 1 of each year, the director shall submit to the governor; lieutenant governor; speaker of the house of representatives; chairman, senate jurisprudence committee; and chairman, house of representatives criminal jurisprudence committee a report of all intercepts as defined herein conducted pursuant to this article and terminated during the preceding calendar year. Such report shall include:

- (1) the reports of judges and prosecuting attorneys forwarded to the director as required in this section;
- (2) the number of Department of Public Safety personnel authorized to possess, install or operate electronic, mechanical, or other devices;
- (3) the number of Department of Public Safety and other law enforcement personnel who participated or engaged in the seizure of intercepts pursuant to this article during the preceding calendar year; and
- (4) the total cost to the Department of Public Safety of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, manpower, and expenses incurred as compensation for use of facilities or technical assistance provided to the department.

Sec. 16. RECOVERY OF CIVIL DAMAGES AUTHORIZED. (a) A person whose wire or oral communication is intercepted, disclosed, or used in

violation of this article has a civil cause of action against any person who intercepts, discloses, or uses or procures another person to intercept, disclose, or use the communication and is entitled to recover from the person:

- (1) actual damages but not less than liquidated damages computed at a rate of \$100 a day for each day of violation or \$1,000, whichever is higher;
- (2) punitive damages; and
- (3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(b) A good faith reliance on a court order or legislative authorization constitutes a complete defense to any civil or criminal action brought under this article.

Sec. 17. EXCEPTIONS. It is an exception to the application of Section 16 that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire or oral communication;

(3) a person acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception; or

(4) a person not acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of this state or for the purpose of committing any other injurious act.

SECTION 2. Chapter 16, Penal Code, as amended, is amended by adding Section 16.02 to read as follows:

Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE OR ORAL COMMUNICATIONS. (a) In this section, "communication common carrier," "contents," "electronic, mechanical, or other device," "intercept," "investigative or law enforcement officer," "oral communication," and "wire communication" have the meanings given those terms in Article 18.20, Code of Criminal Procedure, 1965.

(b) Except as specifically provided by Subsection (c) of this section, a person commits an offense if he:

(1) knowingly or intentionally intercepts, endeavors to intercept, or procures another person to intercept or endeavor to intercept a wire or oral communication;

(2) knowingly or intentionally discloses or endeavors to disclose to another person the contents of a wire or oral communication if he knows or is reckless about whether the information was obtained through the interception of a wire or oral communication in violation of this subsection;

(3) knowingly or intentionally uses or endeavors to use the contents of a wire or oral communication if he knows or is reckless about whether the

information was obtained through the interception or a wire or oral communication in violation of this subsection; or

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire or oral communications without court order or authorization.

(c) It is an affirmative defense to the application of Subsection (b) of this section that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire or oral communication;

(3) a person acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception; or

(4) a person not acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of this state or for the purpose of committing any other injurious act.

(d) Except as provided by Subsection (e) of this section, a person commits an offense if he knowingly or intentionally manufactures, assembles, possesses, sells, sends, or carries an electronic, mechanical, or other device that is designed primarily for nonconsensual interception of wire or oral communications.

(e) It is an affirmative defense to the application of Subsection (d) of this section that the manufacture, assembly, possession, sale, sending, or carrying of an electronic, mechanical, or other device that is designed primarily for the purpose of nonconsensual interception of wire or oral communication is by:

(1) a communication common carrier or an officer, agent, or employee of or a person under contract with a communication common carrier acting in the normal course of the communication carrier's business; or

(2) an officer, agent, or employee of a person under contract with, bidding on contracts with, or doing business with the United States or this state acting in the normal course of the activities of the United States or this state.

(f) An offense under this section is a felony of the second degree.

(g) An electronic, mechanical, or other device that is used, manufactured, assembled, possessed, sold, sent, or carried in violation of this section may be seized by a peace officer pursuant to executing a lawful search or arrest.

(h) Property seized pursuant to this section may be forfeited to the Department of Public Safety in the manner provided by Article 18.18, Code of Criminal Procedure, 1965, as amended, for disposition of seized property. The department may destroy the property or maintain, repair, use, and operate the property in a manner consistent with Article 18.20, Code of Criminal Procedure, 1965.

SECTION 3. The title of Chapter 16, Penal Code, as amended, is amended to read as follows:

**CHAPTER 16. CRIMINAL INSTRUMENTS AND INTERCEPTION
OF WIRE OR ORAL COMMUNICATION**

SECTION 4. (a) A person who has been convicted of an offense under Section 16.02, Penal Code, may not be certified by the Commission on Law Enforcement Officer Standards and Education to be a peace officer.

(b) Final conviction of an offense under Section 16.02, Penal Code, disqualifies a person previously certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be a peace officer, and the Commission shall immediately revoke the certification of a person so convicted.

SECTION 5. This Act shall not be in force after September 1, 1985.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator McKnight offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360**, SECTION 1, Article 18.20, Section 6 to read as follows:

Sec. 6. REQUEST FOR APPLICATION FOR INTERCEPTION. (a) The Attorney General may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire or oral communications.

(b) The head of a local law enforcement agency or, if the head of the local law enforcement agency is absent or unable to serve, the acting head of the local law enforcement agency may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire or oral communications. Prior to the requesting of an application under this subsection, the head of a local law enforcement agency must submit the request and supporting affidavits to the Attorney General, who shall make a finding in writing whether the request and supporting affidavits establish that other investigative procedures have been tried and failed or they reasonably appear unlikely to succeed or to be too dangerous if tried, is feasible, is justifiable, and whether the necessary resources are available. The prosecutor may file the application only after a written positive finding on all the above requirements by the Attorney General.

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 20, Nays 8.

Yeas: Blake, Brooks, Brown, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Wilson.

Nays: Caperton, Doggett, Mauzy, McKnight, Truan, Uribe, Vale, Williams.

Absent-excused: Andujar, Parker, Santiesteban.

Senator Caperton offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to House Bill 360, SECTION 1, Article 18.20, Code of Criminal Procedure, by deleting Section 8(a)(5) and renumbering the following subdivisions, deleting Section 9(a)(5), and amending Section 9(b)(6) to read as follows:

“(6) that covert entry or surreptitious entry is not permitted to install wiretapping, electronic surveillance or eavesdropping equipment.”

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 16, Nays 11.

Yeas: Blake, Brown, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Richards, Sarpalius, Traeger, Travis, Wilson.

Nays: Brooks, Caperton, Doggett, Mauzy, McKnight, Ogg, Snelson, Truan, Uribe, Vale, Williams.

Absent: Short.

Absent-excused: Andujar, Parker, Santiesteban.

Question - Shall the pending amendment be adopted?

HOUSE BILL 2089 REREFERRED

On motion of Senator Blake and by unanimous consent, **H.B. 2089** was withdrawn from the Committee on Economic Development and rereferred to the Committee on Natural Resources.

HOUSE BILL 1784 REREFERRED

On motion of Senator Traeger and by unanimous consent, **H.B. 1784** was withdrawn from the Committee on Jurisprudence and rereferred to the Committee on Intergovernmental Relations.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 94, Relating to the approval of numbers of and salaries of community center employees.

S.B. 102, Relating to fees for indexing names on assumed business or professional name certificates.

S.B. 277, Relating to the diagnosis and care of persons having tuberculosis.

S.B. 332, Relating to jurisdiction of the Industrial Accident Board over claims under voluntary workers' compensation insurance policies.

S.B. 344, Relating to including volunteer firefighters, policemen, emergency medical personnel, and other volunteers specifically named under political subdivisions workers' compensation.

S.B. 544, Relating to weapons proficiency of peace officers. (With amendments)

S.B. 644, Relating to the appointment of a trustee for violations of requirements relating to nursing and convalescent homes and related institutions.

S.B. 648, Relating to the processing of results of absentee electronic voting system ballots. (With amendment)

S.B. 813, Relating to the validity of construction contracts and related agreements.

S.B. 877, Relating to county road administration in Dallas County.

S.B. 896, Relating to campus police personnel at North Texas State University and Texas Woman's University. (With amendment)

S.B. 999, Relating to the jurisdiction of the County Court of Denton County and the transfer of cases between the county courts.

S.B. 1024, Relating to the powers and duties of county historical commissions and the county commissioners courts with respect to historical matters. (With amendment)

S.B. 1055, Relating to the definition of rejected risk under the Texas Workers' Compensation Assigned Risk Pool. (With amendment)

S.B. 1073, Relating to the method of maintaining duplicate voter registration certificate files.

S.B. 1175, Relating to the time of filing and publishing call reports of state banks.

S.B. 1187, Relating to the oath and acceptance of office of directors of state banks.

S.B. 1188, Relating to obligations which are not subject to the liability limit of a state bank.

S.B. 1189, Relating to obligations which are not subject to the liability limit of a state bank.

S.B. 1200, Relating to the issuance of convertible debentures by a state bank.

S.B. 1201, Relating to the issuance of fractional shares.

S.B. 1220, Relating to residence requirements for the offices of justice of the peace and constable.

S.B. 1225, Relating to the compensation of the judges of the district courts in certain counties.

S.B. 1226, Relating to supplemental compensation of justices of the courts of appeals by the counties.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

RECESS

On motion of Senator Mauzy the Senate at 12:15 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The Senate met at 2:00 o'clock p.m. and was called to order by the President.

LEAVE OF ABSENCE

Senator McKnight was granted leave of absence for the remainder of today on account of important business on motion of Senator Mauzy.

HOUSE BILL 360 ON SECOND READING

The Senate resumed consideration of **H.B. 360** on its second reading and passage to engrossment with an amendment by Senator Howard pending.

Question - Shall the amendment be adopted?

Senator Caperton offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360**, SECTION 2, Section 16.02 by amending Subsection (b)(4) to read as follows:

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire or oral communications.

The amendment to the pending amendment was read.

On motion of Senator Caperton and by unanimous consent, the amendment to the pending amendment was withdrawn.

Senator Caperton offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to House Bill 360, SECTION 1, Article 18.20, Code of Criminal Procedure, Section 9(b)(6) to read as follows:

(6) provided the facility from which or the place where the communication is to be intercepted is not a domicile, whether or not a covert entry or surreptitious entry is necessary to properly and safely install wiretapping, electronic surveillance of eavesdropping equipment. If the facility from which or the place where the communication is to be intercepted is a domicile, the order shall specify that covert entry is not permitted.

The amendment to the pending amendment was read.

On motion of Senator Caperton and by unanimous consent, the amendment to the pending amendment was withdrawn.

Senator Caperton offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to House Bill 360, SECTION 1, Article 18.20, Code of Criminal Procedure, Section 9(b)(6) to add the following language after the word "equipment":

(6) provided the facility from which or the place where the communication is to be intercepted is not a domicile, whether or not a covert entry or surreptitious entry is necessary to properly and safely install wiretapping, electronic surveillance of eavesdropping equipment. If the facility from which or the place where the communication is to be intercepted is a domicile, the order shall specify that covert entry is not permitted.

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 15, Nays 10, Paired 1.

Yeas: Blake, Brown, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Richards, Sarpalius, Traeger, Travis, Wilson.

Nays: Brooks, Caperton, Doggett, Mauzy, Ogg, Short, Snelson, Truan, Vale, Williams.

Absent: Uribe.

Absent-excused: Andujar, Parker, Santiesteban.

PAIRED VOTE

Senator Glasgow (present), who would vote "Yea", with Senator McKnight (absent), who would vote "Nay".

Senator Caperton offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360**, SECTION 2, Section 16.02, Subsection (a) to read as follows:

(a) In this section, "covert entry," "communication common carrier," "contents," "electronic, mechanical, or other device," "intercept," "investigative or law enforcement officer," "oral communication," and "wire communication" have the meanings given those terms in Article 18.20, Code of Criminal Procedure, 1965.

The amendment to the pending amendment was read and was adopted.

Senator Mauzy offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360**, SECTION 1, Article 18.20, Section 1 (8) to read as follows:

(8) "Prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney, with jurisdiction in the county in which the facility or place where the communication to be intercepted is located.

The amendment to the pending amendment was read and was adopted.

Senator Mauzy offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360**, SECTION 1, Article 18.20, Section 7 (d) to read as follows:

(d) An otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this article does not lose its privileged character and any evidence derived from such privileged communication against the party to the privileged communication shall be considered privileged also.

The amendment to the pending amendment was read and was adopted.

Senator Doggett offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360** as follows:

- (1) On page 4, line 16, strike "or of" and substitute a comma.
- (2) On page 4, line 17, between the parenthesis and the period, insert "or a felony of misdemeanor under Section 39.01, Penal Code".

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 18, Nays 7, Paired 1.

Yeas: Blake, Brooks, Brown, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Richards, Sarpalius, Snelson, Traeger, Travis, Williams, Wilson.

Nays: Caperton, Doggett, Mauzy, Ogg, Short, Truan, Vale.

Absent: Uribe.

Absent-excused: Andujar, Parker, Santiesteban.

PAIRED VOTE

Senator Glasgow (present), who would vote "Yea", with Senator McKnight (absent), who would vote "Nay".

Senator Ogg offered the following amendment to the pending amendment:

Amend floor substitute for **H.B. 360**, page 23, line 5 by inserting the following new Section 5 and renumbering existing Section 5 and the remaining sections accordingly:

SECTION 5. The amount of \$1,000,000.00 is hereby appropriated from the General Revenue Fund to the Texas Department of Public Safety for the purpose of carrying out its responsibilities under this Act.

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 19, Nays 7.

Yeas: Blake, Brooks, Brown, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Wilson.

Nays: Caperton, Doggett, Mauzy, Ogg, Truan, Vale, Williams.

Absent: Uribe.

Absent-excused: Andujar, McKnight, Parker, Santiesteban.

Senator Vale offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360**, SECTION 1, Article 18.20, Sec. 5 CONTROL OF INTERCEPTING DEVICES by adding a new subsection (c) to read as follows:

(c) The director shall employ qualified bilingual interpreters as commissioned officers for the purpose of monitoring bilingual oral or wire communications intercepted in accordance with the provisions of this article.

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 22, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Williams, Wilson.

Nays: Doggett, Mauzy, Truan, Uribe, Vale.

Absent-excused: Andujar, McKnight, Parker, Santiesteban.

Senator Mauzy offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360**, SECTION 2, Section 16.02, by adding Subsections (i), (j), (k), and (l) after Subsection (h), such Subsections to read as follows:

(i) A party to an offense under this Section may be required to furnish evidence or testify about the offense.

(j) A party to an offense under this Section may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(k) For purposes of this Section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(l) A conviction under this Section may be had upon the uncorroborated testimony of a party to the offense.

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 19, Nays 7, Paired 1.

Yeas: Blake, Brooks, Brown, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Wilson.

Nays: Caperton, Doggett, Mauzy, Truan, Uribe, Vale, Williams.

Absent-excused: Andujar, McKnight, Parker, Santiesteban.

PAIRED VOTE

Senator Glasgow (present), who would vote "Yea", with Senator McKnight (absent), who would vote "Nay".

(Senator Wilson in Chair)

Senator Mauzy offered the following amendment to the pending amendment:

Amend Floor Amendment No. 1 to **H.B. 360** by adding a subsection (c) to Section 8 of the Act on page 8 to read as follows:

(c) Any person not employed by the government who supplies information contained in the application must appear personally before the court to which the application is presented. If said person desires his identity to

remain confidential, the application may refer to him by code and the issuing court must take from him a separate affidavit as to the facts he supplies which shall not be disclosed except upon subsequent court order. This subsection need not be complied with if the application contains facts showing:

- (1) despite diligent efforts, which shall be delineated, the affiant has been unable to locate the informant; or
- (2) the informant is located at such a distance or is hospitalized so that his appearance would be impractical but his affidavit is provided as required by this subsection; or
- (3) the informant is deceased.

The amendment to the pending amendment was read.

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 19, Nays 7, Paired 1.

Yeas: Blake, Brooks, Brown, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Ogg, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Wilson.

Nays: Caperton, Doggett, Mauzy, Truan, Uribe, Vale, Williams.

Absent-excused: Andujar, McKnight, Parker, Santiesteban.

PAIRED VOTE

Senator Glasgow (present), who would vote "Yea", with Senator McKnight (absent), who would vote "Nay".

SENATOR ANNOUNCED PRESENT

Senator Parker who had previously been recorded as "Absent-excused" was announced "Present".

Senator Doggett offered the following amendment to the pending amendment:

Amend H.B. 360 by striking all below the enacting clause.

The amendment to the pending amendment was read.

(President in Chair)

On motion of Senator Howard, the amendment to the pending amendment was tabled by the following vote: Yeas 23, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Ogg, Parker, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Williams, Wilson.

Nays: Doggett, Mauzy, Truan, Uribe, Vale.

Absent-excused: Andujar, McKnight, Santiesteban.

Question recurring on adoption of the pending amendment as amended, the pending amendment as amended was adopted.

RECORD OF VOTES

Senators Doggett, Truan, Mauzy, Uribe and Vale asked to be recorded as voting "Nay" on the adoption of the amendment.

On motion of Senator Howard and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTES

Senators Doggett, Truan, Mauzy, Uribe and Vale asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 360 ON THIRD READING

Senator Howard moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 360** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Meier, Mengden, Ogg, Parker, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Williams, Wilson.

Nays: Doggett, Mauzy, Truan, Uribe, Vale.

Absent-excused: Andujar, McKnight, Santiesteban.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 5. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House concurred in Senate amendments to House Bill No. 1208 by record vote of 136 ayes, 0 nays, 1 present-not voting.

H.C.R. 191, Permitting H.B. Zachry to sue the state.

H.B. 1616, Relating to operating a motor vehicle, trailer, or semi-trailer with expired registration.

H.B. 1706, Relating to the dumping and other disposal of solid waste.

H.B. 1752, Relating to access by school districts to police records of applicants for employment.

H.B. 1790, Relating to the notice of intent to file monthly political contribution and expenditure statements by a general purpose political committee.

H.B. 1803, Relating to venue in a suit arising from a lease or rental contract for residential premises.

H.B. 1878, Relating to minimum compensation for certain court-appointed attorneys.

H.B. 2119, Relating to joint elections held by incorporated cities and towns and school districts.

H.B. 2188, Relating to the regulation and inspection of boilers.

H.B. 2397, Relating to conforming the Agriculture Code to laws enacted by the 67th Legislature.

H.C.R. 183, Granting Buckner Construction Company permission to sue the State of Texas in relation to work performed in Montgomery County, Texas.

H.B. 1564, Relating to the residence of students for voting purposes.

H.B. 993, Relating to hospitals' liens on certain causes of action.

H.B. 42, Relating to the penalty for the sale or purchase of a child.

H.B. 2365, Relating to the creation and funding of a child support collection office under the juvenile board of Smith County.

H.B. 1689, Relating to the regulation of athletic trainers.

H.B. 2356, Relating to the payment to the state by a retailer of a portion of the amount of the interest received from credit extended on sales subject to the sales and use tax and to the disposition of the resulting revenue.

H.B. 2362, Relating to the issuance of search warrants.

H.B. 305, Relating to referral of cases to a master by certain courts.

H.B. 308, Relating to special parking regulations for disabled veterans.

H.B. 504, Relating to the appraisal of property limited in use to public access airport space purposes by deed or voluntary restrictions.

H.B. 512, Relating to adoption services of the Texas Department of Human Resources for hard-to-place children.

H.B. 647, Relating to manual labor of county jail prisoners.

H.B. 824, Relating to increasing the amount of bond coverage available to state employees.

H.B. 988, Relating to distribution of voter registration application forms at high school graduation exercises.

H.B. 1043, Relating to a court administrator system for county courts in Tarrant County.

H.B. 1817, Relating to injunctions of public nuisances.

H.B. 1818, Relating to injunctions of common nuisances.

H.B. 1860, Relating to an injunction to prevent the use of leased property for the sale of a controlled substance.

H.B. 2033, Relating to certain coastal land situated in Calhoun County.

H.B. 2049, Relating to identification markings on special mobile equipment.

H.B. 2131, Relating to the planning, construction, and improvement of suburban roads in certain urban areas.

H.B. 2254, Relating to subrogation under insurance policies covering damage to certain real property.

H.B. 2289, Relating to continued operation of the Texas Closeup Program.

H.B. 2373, Relating to the creation of Probate Court No. 2 of Tarrant County and jurisdiction of the county courts at law.

S.B. 859, Relating to the date on which the terms of office expire for members of the boards of regents of The University of Texas System and The Texas A&M University System.

S.B. 464, Relating to the membership of the sesquicentennial commission. (With amendments)

S.B. 974, Relating to the distribution of the proceeds received from the sale of certain highway rights-of-way.

S.B. 228, Relating to the regulation of alcohol fuels and certain alcohol producing equipment and to the coordination of activities and information relative to alcohol fuels. (With amendments)

S.B. 298, Relating to the continuation of the Veterans Affairs Commission and the administration of veterans affairs by this state. (With amendment)

S.B. 753, Relating to regulation of chiropractors and continuation of the Texas Board of Chiropractics Examiners. (With amendment)

S.B. 594, Relating to the licensing and regulation of home health care agencies and persons who provide home health service.

S.B. 372, Relating to the penalty for theft of equipment designed for use in exploration for or production of natural gas or crude petroleum oil. (With amendment)

S.B. 382, Relating to the financing of manufactured home credit transactions. (With amendments)

S.B. 483, Relating to the authority of political subdivisions to regulate the use of land near airports.

S.B. 801, Relating to the regulation of persons who practice public accountancy. (With amendments)

S.B. 915, Relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers. (With amendment)

S.B. 121, Relating to the admissibility in a criminal case of a statement made by an accused. (With amendments)

S.B. 1177, Relating to the creation, administration, powers, duties, operations, and financing of the Texas Low-Level Radioactive Waste Disposal Authority. (With amendments)

S.B. 127, Relating to the criminal justice division in the governor's office, the criminal justice division advisory board, and the criminal justice planning fund. (With amendments)

S.B. 383, Relating to the membership of the Texas Real Estate Research Advisory Committee and the continuation and administration of the Texas Real Estate Research Center. (With amendments)

S.B. 320, Relating to pilot programs and services for deaf-blind multihandicapped individuals.

H.C.R. 212, In memory of Lucille Slaughter.

The House refused to concur in Senate amendments to **H.B. 872** and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

House Conferees: Davis, Chairman; Schlueter, Sharp, Peveto, Khoury.

H.B. 167, Relating to the selection of jurors for the justice and municipal courts.

H.B. 347, Relating to the exemption of certain peace officers from regulation under the Private Investigators and Private Security Agencies Act.

H.B. 505, Relating to taxation of public airport facilities that are leased to private air carriers.

H.B. 1322, Relating to tolerance allowances from weight limitations for certain vehicles.

H.B. 2256, Relating to the educational requirements for a chiropractor's license.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

MEMORIAL RESOLUTION

S.R. 729 - By Glasgow: Memorial resolution for James W. Coody.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 184 - (McKnight): Commending Dr. H. E. Jenkins.

S.R. 727 - By Wilson: Extending congratulations to Don Nagel.

ADJOURNMENT

On motion of Senator Mauzy the Senate at 4:56 o'clock p.m. adjourned until 9:00 o'clock a.m. Monday, May 25, 1981.